

Commonwealth of Massachusetts
Michael S. Dukakis, Governor

Executive Office of
Communities and Development
Amy S. Anthony, Secretary



* UMASS/AMHERST *

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Local Housing Policies and State Development Assistance

A Guide to Executive Order No. 215



GOVERNMENT DOCUMENTS
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Dear Massachusetts Citizen:

Through the 1980's Massachusetts will experience a dramatic increase in the rate of household formation, as the so-called "baby boom" generation reaches the homebuying ages. Without an adequate housing supply to meet the increasing demand, shelter costs will continue to escalate.

The social and economic consequences of this housing affordability crisis are alarming. As housing becomes scarce and more expensive, the poor and the elderly will face the most severe deprivation. Renters will be forced to spend higher proportions of their income on rent. First time homebuyers will be excluded from the market. Access to growing suburban employment opportunities will be restricted, and the Commonwealth's ability to attract and retain industry will be constrained.

While general inflation and national monetary policy significantly influence housing costs, affordability is also affected by local attitudes towards residential development. By excluding housing growth in general, or a specific housing type in particular, communities place an unreasonable burden on their neighbors and on the Commonwealth as a whole.

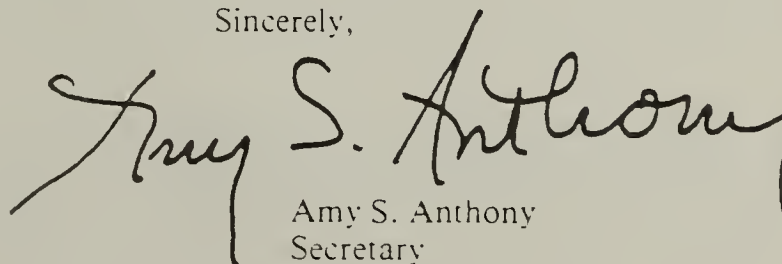
Solutions to the housing affordability crisis require the cooperation of individuals from both the public and private sectors. State government has a responsibility to play a leadership role — specifically, the Commonwealth must continue to actively encourage more balanced local attitudes towards housing growth.

Towards this end, Governor Dukakis has directed all state agencies to maintain firm enforcement of Executive Order 215. Consequently, in reviewing local applications for discretionary state funds, it will be state policy to withhold funding from communities determined to be unreasonably restrictive in their housing practices.

The Executive Office of Communities and Development has issued this brochure to explain how the Executive Order will be enforced, and what communities can do to ensure continued eligibility for state assistance.

Please be assured, my office is prepared to offer whatever assistance you may require towards meeting our mutual goal of more affordable housing opportunities.

Sincerely,

A handwritten signature in cursive script that reads "Amy S. Anthony". The signature is fluid and extends across the width of the text block.

Amy S. Anthony
Secretary

COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE ORDER NO. 215 DISBURSEMENT OF STATE DEVELOPMENT ASSISTANCE

MARCH 1982

Preamble

The development of affordable housing is critical to meeting the needs of the Commonwealth's population. In order to counter-balance the growing housing needs of our population, Massachusetts needs to add to its housing supply over the next decade. Without a supply of affordable housing, Massachusetts will find it more difficult to attract and retain industry.

Massachusetts provides funding to its cities and towns through a variety of programs designed to foster sound growth and development. The distribution of discretionary funds should, to the maximum extent feasible, promote the balanced growth of the Commonwealth.

In some cities and towns, local regulations and restrictions have the effect of excluding the development of affordable housing. In so doing, they have imposed development costs inequitably on other communities and have impaired the ability of our citizens to locate affordable housing. It is appropriate, therefore, in the review of local applications for state development assistance that the city's or town's housing policies and practices be taken into consideration. This shall be accomplished so as not to infringe upon the constitutional right to home rule.

WHEREAS, housing growth, economic development, and environmental protection are statewide needs which are not mutually exclusive and are each vital to the balanced growth and development of the Commonwealth; and

WHEREAS, an ample supply of housing, with diversity in price and location, is necessary both for the well being of our citizens and for a strong state economy; and

WHEREAS, state development assistance should be awarded to cities and towns which are not unreasonably restrictive of housing growth;

NOW THEREFORE, I, Edward J. King, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution and by the statutes of this Commonwealth, do hereby order and direct that:

1. All state agencies disbursing development-related financial assistance to cities or towns should consider, in making such discretionary awards, the applicant city's or town's housing policies and practices. It should be the general policy of all state agencies not to award discretionary funds to cities or towns which have been determined to be unreasonably restrictive of new housing growth. For the purposes of this Executive Order, "development-related assistance" may include (but is not limited to): economic development assistance; open space and recreation funds; technical assistance grants; so-called "urban systems" transportation improvements; conservation land grants; elderly housing; sewer collection system and water system grants; parking facility funds; convention center facility grants; federal grant funds for development-related activities; and the review of federal grant applications for development assistance. For the purpose of this Executive Order, "development-related assistance" does not include local aid fund reimbursements or distributions.

2. The Secretary of Communities and Development (hereinafter, the Secretary) shall make a determination, based on evidence submitted to him, regarding whether a city or town is or is not unreasonably restrictive of housing growth. In making this determination, the Secretary shall give special consideration to the city's or town's efforts to facilitate the development of housing for low and moderate income families. The city or town shall be notified in writing of the determination, and a negative determination shall be re-evaluated upon a showing of a significant effort toward policy re-direction. A listing of all determinations shall be distributed on a regular basis to all state agencies which disburse development-related assistance.

3. Evidence may be submitted to the Secretary at any time regarding a particular city's or town's housing policies and practices, in accordance with procedures established by the Secretary. A copy of such evidence shall be forwarded to the chief elected official of the city, or the board of selectmen of the town, and the city or town shall be provided an opportunity to respond to the evidence as submitted. The Executive Office of Communities and Development shall solicit housing information from time to time, in order that a state housing profile may be compiled.

4. The Secretary shall respond within 14 days to requests from agencies regarding whether a specific city or town is or is not unreasonably restrictive of housing growth. If the timely award of assistance is critical, the Secretary may waive this review period. Each state agency which disburses development-related assistance to cities and towns shall cooperate with the Executive Office of Communities and Development to establish a mutually acceptable procedure to review, based upon the Secretary's heretofore declared determination of an applicant city's or town's housing policies, what course of action should be required on the application for the development related assistance.

5. Exceptions to the above defined requirements shall be granted for awards that are regionally significant, unique, or in the public interest upon petition of the Cabinet Secretary responsible for the funding agency to, and with the concurrence of, the Commissioner of Administration.

6. The Executive Office of Communities and Development, at the request of the city or town, shall provide assistance to those cities and towns which have been determined to be unreasonably restrictive of new housing growth to develop a specific strategy, with clearly defined actions, to facilitate the development of affordable housing. Once a strategy has been developed, and it has been approved by the Secretary and by the appropriate local boards and commissions responsible for its implementation, the Secretary shall make a determination that the city or town is not unreasonably restrictive of new housing growth, and shall so notify all appropriate state funding agencies.

How are a community's housing policies linked with state development-related grants?

Executive Order 215 directs all state agencies which administer development-related assistance programs to consider the applicant community's housing policies and practices. It is the policy of state government that no grant awards be made to communities which have been determined to be unreasonably restrictive of new housing growth. Such determinations are made by the Secretary of Communities and Development.

Which state programs are affected?

In general, this Executive Order applies to all state development assistance programs. Specifically, the following programs are affected:

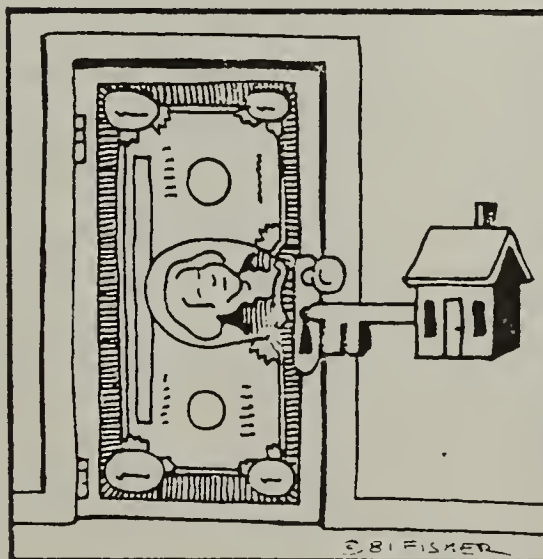
- ☐ economic development assistance;
- ☐ open space and recreation funds;
- ☐ technical assistance grants;
- ☐ so-called "urban systems" transportation improvements;
- ☐ conservation land grants;
- ☐ elderly housing grants;
- ☐ sewer collection and water system grants;
- ☐ parking facility funds;
- ☐ convention center grants;
- ☐ federal block grant funds (administered by state government) for development-related activities; and
- ☐ the state's review of federal grant applications for development assistance.

Any community which is routinely excluding housing growth will be denied future grants under the above programs. (It should be noted that the Executive Order will not affect ongoing state investment programs for transportation and wastewater facilities.)

State government also has an opportunity to review and comment on applications for federal assistance. Where the applicant community has been determined to be unreasonably restrictive of new housing growth, the state's review will indicate that, due to this fact, state government cannot support the application for federal funds.

Does this new policy conflict with local "home rule"?

State government is not attempting to dictate local housing policies. Those policies are appropriately made at the local level. This state policy does *not* infringe on local government prerogatives to determine local zoning and subdivision regulations, nor does it directly interfere with any local action dealing with housing issues.



However, state government does have a responsibility, in deciding how to allocate *state* funds, to ensure that those funds support overall *state* policies. At this time, the production of new housing units - particularly affordable units - is not adequate to meet the Commonwealth's needs. To improve this situation a community has to accommodate its "fair share" of housing growth. When any one community decides to exclude housing growth, other communities often bear the brunt of that decision. The state cannot continue to "reward" exclusionary communities with state discretionary funding.

With population growth levelling off, do we really need that much additional housing?

It is true that Massachusetts population growth is levelling off — our population grew by slightly less than 1% between 1970 and 1980. But the growth of *households* continues at a substantial rate, nearly 18% over the past decade, and about 16% is projected between 1980 and 1990. This high level of growth in households is due in large part to the children of the so-called "baby boom" who are now adults and are entering the housing market in ever increasing numbers. In addition, there is a growing number of smaller households of single people, widowed or divorced persons, and the elderly.

But only recently has the housing market responded to this high level of demand. We are still "catching up" on unmet housing needs from the last decade. As demand continues to outpace supply, the cost of housing continues to rise. The result is that we are all hurt - homeowners, renters, businesses, young families, the elderly - by the shortage of affordable housing.

A number of factors contribute to our shortage of affordable housing. Some of these factors may be beyond our control. But one of the major obstacles - exclusionary local housing policies and practices - is a factor which we can do something about.

How are communities determined to be "unreasonably restrictive of new housing"?

The Secretary of Communities and Development will determine that a community is "unreasonably restrictive of new housing growth" only after all three of the following conditions have been met:

1. there is clear and persuasive information available indicating that the community has routinely excluded housing growth;
2. the community has been given an opportunity to respond to that information, and it has not satisfactorily disputed the facts as presented; and
3. the community has not developed a specific strategy, with clearly identified actions, to facilitate the development of affordable housing.



Therefore, before any such determination is made, the community will be given an opportunity to refute the factual information, and to present its strategy for responding to the situation as it exists.

How does someone present information on a community thought to be "exclusionary"?

Information regarding a specific community may be made available to the Secretary of Communities and Development from any of the following sources:

- ☐ a local board or local elected official from that community;
- ☐ the regional planning agency;
- ☐ local residents or community organizations;
- ☐ a housing developer aggrieved by a specific local action; or
- ☐ another interested state agency;
- ☐ reviews of local housing activities on an ongoing basis.

In addition, the Executive Office of Communities and Development collects information on all communities to be used as a basis for comparison.

A copy of any information submitted is forwarded to the affected community, through its chief elected official, and the community is given an opportunity to respond.

Information so submitted must demonstrate that the community's policies and regulations tend to exclude affordable housing and/or that the community has routinely denied approvals for housing proposals.

Are communities given an opportunity to respond?

Before any determination is made that a community has unreasonably excluded housing growth, the affected community is provided with two opportunities to respond

First, the community is able to dispute the factual information submitted. For example, incorrect or obsolete data may have been submitted. Or, unique local characteristics (such as a large share of publicly-owned land) might explain low housing growth.

Secondly, the community is able to formulate a specific strategy, with clearly identified actions, to facilitate the development of affordable housing. For example, the community might decide to revise its zoning to allow innovative housing options or to provide incentives for the development of affordable housing. The formulation of specific actions is totally a local responsibility. Any plan must

have the net effect of stimulating more housing and less expensive housing. If the strategy is found to be acceptable by the Secretary and it has been approved by the appropriate local boards and commissions responsible for its implementation, then the community will be determined to be in compliance with Executive Order 215.

When a community has been determined to be "exclusionary," what are the immediate impacts?

Once a community has been determined to be "exclusionary," the Secretary of Communities and Development will notify:

- the community, through its chief elected official;
- the Governor;
- all state agencies disbursing development-related financial assistance; and

The notification will indicate that, under normal circumstances, development-related grant awards will not be made to the identified community, pursuant to the Executive Order.

In addition, when any state agency is considering making a grant award, it will notify the Executive Office of Communities and Development (EOCD) at least 14 days prior to any final award decision. Within that period of time, EOCD will notify the agency if a determination had been previously made. If no determination regarding a particular community had been made previously, the Secretary will utilize that period of time to

make a determination if there is information warranting such action and the community has had a reasonable opportunity to respond.

Will this disrupt ongoing grants and the projects they support?

The Executive Order does not apply to ongoing grants, or to existing project commitments. These will not be disrupted. The intent of the Executive Order is to limit *future* awards of state development grant funds to only those communities who are not exclusionary.

Once a community has been determined to be "exclusionary," how can the community get that determination changed?

The determination is reviewed on an ongoing basis. If and when the community develops an acceptable strategy and it has demonstrated its commitment to implement that strategy, then the determination will be changed, and funding agencies will be so notified.

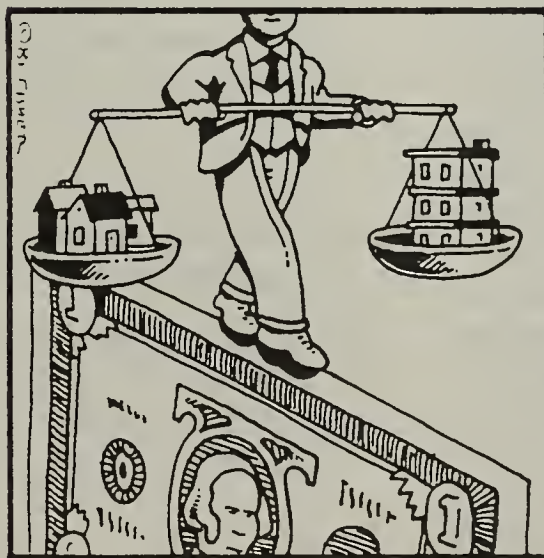
Are exceptions to this policy granted?

Exceptions to the Executive Order will be granted *only* for projects that are regionally significant and unique, and *only* upon petition of the Cabinet Secretary with oversight of the funding agency, and *only* upon the concurrence of the Secretary of Administration and Finance.

If a community has developed subsidized housing, is that sufficient to satisfy the Executive Order?

The Governor issued the Executive Order based on a concern about the *overall* shortage of affordable housing — public and private. Subsidized housing plays an especially important role in meeting the needs of elderly and low-income families. But, even with our greatly expanded efforts to provide subsidized housing, the vast majority of our residents will meet their housing needs through the private housing market. While our programs to provide subsidized housing have become increasingly successful, private housing production is still beyond the reach of most of our residents.

As a result, this new state policy is aimed at limiting state development grants to only those communities whose policies promote an increase in the overall supply of housing. The development of subsidized housing — particularly if only housing for the elderly — will not, in and of itself, demonstrate that a community is accommodating its fair share of low and moderate income housing.



In reviewing local housing policies and practices, the community's efforts to facilitate the development of housing for low-income families will be given special consideration.

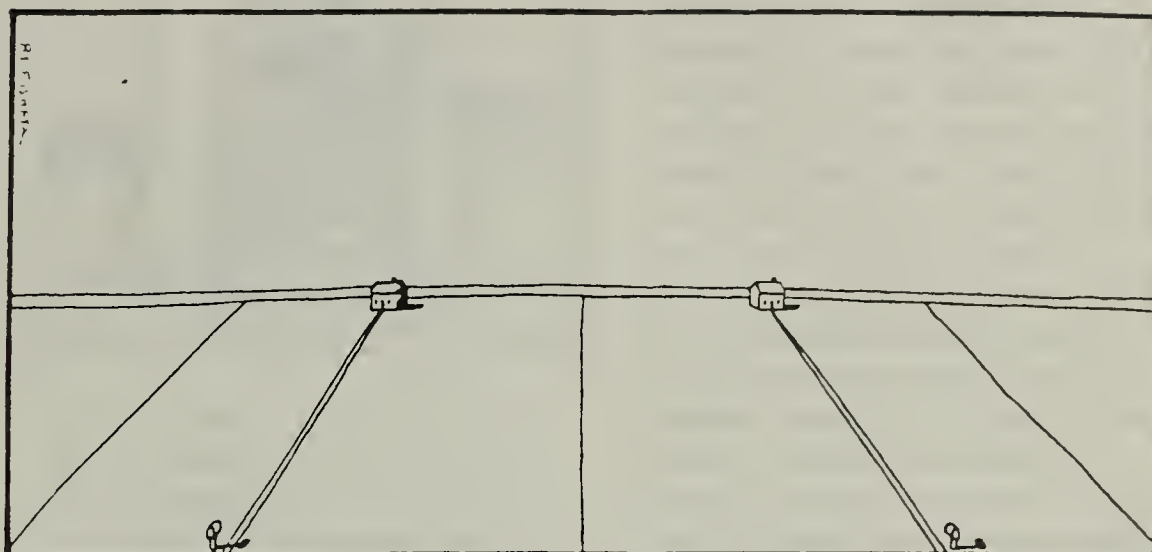
**Has this policy been tested?
Does it create an unfair
administrative burden on
cities and towns?**

This Executive Order — and the policies it represents — was developed after a review of a two-year program which linked state grants for conservation lands to each applicant community's housing policies and practices. The Executive Order has been in effect for more than five years and local policies have been reviewed in more than 130 cities and towns. Less than ten communities have been determined "unreasonably restrictive," and most have developed housing strategies that have resulted in these determinations being withdrawn. The review process worked smoothly, with a minimum of "red tape."

Of these communities reviewed pursuant to the Executive Order, most have had local housing initiatives underway, or have developed local strategies to provide low and moderate income housing, and have thus remained eligible for state funding.

**What are some examples of
exclusionary local practices?**

"Exclusionary local practices," is meant to include any local policy or regulation which, intentionally or not, has the



effect of excluding the development of affordable housing. Some specific examples might be:

- ☐ the lack of any housing in the community for low-income families.
- ☐ a moratorium on new housing;
- ☐ large lot zoning for most of the developable land within the community;
- ☐ subdivision regulation which dictate standards far in excess of what is in existence in the rest of the community, with regard to such items as street width, granite curbing, or sidewalks;
- ☐ zoning which does not permit any multi-family housing;
- ☐ refusals to grant permits for any specific multi-family housing proposals, where they are allowed only on special permit;
- ☐ zoning which does not permit older, larger homes to be subdivided to create "accessory apartments";

☐ local Board of Health regulation of septic systems in excess of Title V of the State Environmental Code with no clear justification; or

☐ municipal land acquisitions undertaken to prevent the development of affordable housing

☐ routine denials of affordable housing proposals;

Any of the examples cited above might be an entirely appropriate response of the community to a legitimate problem it faces. But with no clear evidence to the contrary, and where the net effect is to exclude housing growth, such practices are considered to be *exclusionary*.

No adverse determination will be made when a community denies approvals to a housing proposal which is demonstrably unreasonable or which does not fulfill minimum criteria established by law. The distinction is this: Is the community fighting against housing, or is it planning for new affordable housing?

What can a community do now to insure that it will continue to be able to receive state grants in the future?

In looking at your community to see if it has been exclusionary, you might want to consider the following questions:

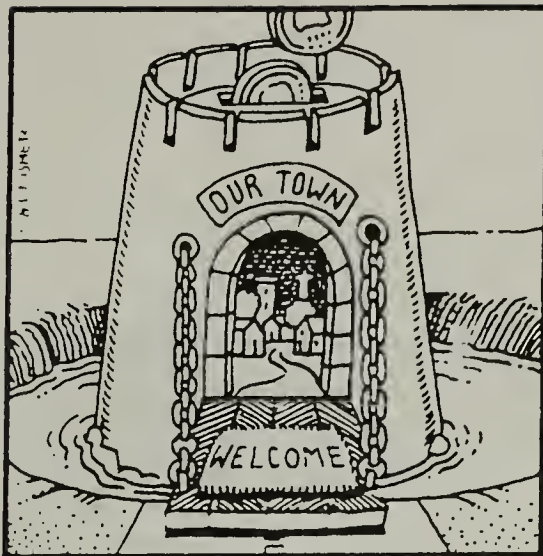
□ Has the community adopted any of the exclusionary policies outlined above? Do these actions clearly tend to exclude affordable housing?

□ Has there been as much housing growth in your community as there has in similar communities? Has the housing that has been built been as affordable as it might have been?

□ Would a young couple be able to find housing in your community? Would an elderly couple be able to sell their large home and move to more suitable housing (such as an apartment or condominium) while staying in your community?

□ What has been the typical local reaction to housing proposals? Do people in town usually react negatively to proposed housing developments, or does the community have a plan for growth?

Even if previous actions of the community have tended to be exclusionary, the community can develop a strategy or program to accommodate housing growth. Once such a strategy has been determined to be acceptable by the Secretary of Communities and Development, and it has been approved by the appropriate local boards and commissions responsible for its implementation, then the community will be classified as not exclusionary.



The strategy should identify specific actions which the community intends to undertake and which are designed to foster the development of affordable housing. The community can specify whatever actions it deems appropriate, so long as those actions will stimulate additional housing.

In formulating a local strategy to foster the development of affordable housing, the community should consider the following actions:

□ *Establish a housing goal for the community:* Determine how much housing the community can reasonably accommodate each year, and set out to plan for that level of growth.

□ *Plan for a diversity of housing types and prices:* If a community only provides for single-family homes on large lots, then housing opportunities for the elderly, young families, and moderate-income households become severely limited. Consider various densities and types of housing, and see where they might fit into the community.

□ *Explore alternatives which allow more housing and which consume less land:* There are various newly developed approaches by which a community could increase the number of housing units without any adverse impacts on its character. For example, some communities now permit larger older homes to be subdivided to create an "accessory apartment." Another approach is the development of two, three, or four-family housing. Cluster zoning, another alternative, can allow a modest increase in density while preserving open space. These and other alternatives deserve consideration and, where appropriate, communities should amend their zoning accordingly.

□ *Find ways to make housing more affordable:* Sometimes, local regulations unnecessarily add to the cost of housing. For instance, some communities have local subdivision regulations which specify site standards which are far in excess of what exists in the remainder of the community. Some examples might include excessive roadway width, granite curbing, and sidewalks on both sides. This is unnecessary and it adds substantially to the cost of new housing.

□ *Simplify the local review process:* All too often, the process for obtaining all the necessary local permits to build housing can be time-consuming, confusing, and frustrating. This need not be so. Frequently, the problem lies in the lack of coordination among local boards and commissions. A developer might get one answer from one board and a different answer from another board. It might also be unclear in which order

local permits should be obtained. One of the first steps for a community is to develop a "roadmap" of the local review process. The various boards and commissions involved should work together to resolve mutual problems and conflicts. One agency might be given a coordinating role. Duplicative, conflicting, or unnecessary steps in the review process can be identified, and the entire process can be made to work better both for the community and for prospective developers.

□ *Develop a program to provide housing for low-income families:* Even with improved, simplified, and more flexible regulations, housing for low-income families cannot be built without some form of state or federal subsidy. Currently, there are available state and federal programs which provide

funding to develop or acquire housing for low-income families. Each community should formulate a program to accommodate its fair share of low-income family housing.

For any of these issues, there is no one standard solution. Each community has to develop its own strategy, to meet its specific housing needs, in keeping with its particular conditions and circumstances. All of the various local agencies, boards, and commissions which are involved in housing development should play an active role in formulating the appropriate local strategy.

In order to obtain more information on this Executive Order, who should be contacted?

The Executive Office of
Communities and Development

is responsible for coordinating the implementation of this Executive Order. EOCD works with each state agency responsible for disbursing development-related financial assistance to insure that local housing policies and practices are considered in the grant award decisions of state agencies. Specifically, Communities and Development determines which communities are or are not exclusionary, and forwarding those findings to the appropriate state agencies.

*For further information, contact:
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(617) 727-7824*

